



4-1-2013

# The Innocence Quarterly [Spring 2013]

Northern California Innocence Project

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Northern California

# Innocence Project

## BREAKING NEWS: 2 EXONERATIONS IN 2013!

See insert ➔

### Ronald Ross Exonerated!

Ronald Ross Exonerated of Attempted Murder Charge  
After Serving Nearly Seven Years of 25-to-Life Sentence

At an emotional hearing on February 22, 2013, NCIP and Keker & Van Nest client Ronald Ross was officially exonerated of an attempted premeditated murder conviction, after serving nearly seven years of a 25-to-life sentence.

Mr. Ross's attorneys argued that newly discovered evidence and proof of false testimony at his original 2006 trial entitled him to a new trial. After three days of evidentiary hearings, the Alameda County District Attorney Nancy O'Malley joined Mr. Ross's petition asking the Court to set aside Mr. Ross's conviction. On February 20, Alameda County Superior Court Judge Jon Rolfson signed an order granting Mr. Ross's habeas petition and vacating the prior convictions and sentence. On February 22, 2013, the Alameda District Attorney formally dismissed the charges, after which the court ordered Mr. Ross's release from custody. Mr. Ross was released later that day, went to his mother's home and enjoyed his first dinner as a newly freed man. His meal of choice: shrimp and oysters.

Mr. Ross was represented jointly by pro bono attorneys Elliot Peters, Jo Golub, Reid Mullen and David Rizk of Keker & Van Nest LLP and NCIP's Linda Starr and Seth Flagsberg. Keith McArthur of McArthur Investigations led the team's factual investigation of the case and made the key evidentiary discoveries that led to Mr. Ross's exoneration.

"We are thrilled to celebrate Ronald's freedom," said Linda Starr, Legal

Director of the Northern California Innocence Project. "Eyewitness misidentification is a leading reason for the wrongful convictions of innocent people. With the wrong man behind bars, the true perpetrator was able to continue his violent attacks. Ronald's case is yet another example of the tragic ramifications mistaken identifications can have for both individuals and the community as a whole. We hope that Mr. Ross's case will highlight the great need for reform of eyewitness identification practices," she said.

"We are tremendously grateful that Ronald is coming home," added Elliot Peters, partner at Keker & Van Nest LLP. "He is truly innocent. And we express our gratitude to District Attorney O'Malley for agreeing with us that Ronald should be freed, and for her dedication to fairness and the pursuit of justice."



Ronald Ross embraces his mother after his exoneration.

### The Case

On November 8, 2006, Mr. Ross was convicted of the attempted murder of Renardo Williams, who was shot on the front porch of his West Oakland apartment on April 15, 2006. The previous day, Williams had confronted a neighbor, Nikisha Stuart, about an alleged fight between Stuart's 14-year-old son, Steven Embrey, Jr., and Mr. Williams's daughter. Ms. Stuart told Mr. Williams she would "send her man" to talk to him. The next evening, two men, accompanied by Mr. Embrey, Jr., came to Mr. Williams' apartment. After a brief confrontation, one of the men shot Mr. Williams in the ribs and they fled.

Mr. Ross lived in the Oakland neighborhood where the shooting occurred, but had never met Mr. Williams or Mr. Embrey, Sr., and no physical evidence linked him to the crime. Mr. Ross was drawn into the investigation, however, when Oakland Police included his picture in a routine photographic line-up shown to witnesses, who identified him as the shooter. At the time, Oakland Police did not believe Mr. Ross was involved in the shooting, and included him in the line-up merely because his mother had once lived in the same apartment building as Ms. Stuart. Police never investigated Mr. Embrey, Sr.

Continued on page 9



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This newsletter is published twice a year for friends of the Northern California Innocence Project at Santa Clara University School of Law, 900 Lafayette Street, Suite 105, Santa Clara, CA 95050; 408-554-4790 (tel), 408-554-5440 (fax); ncip@scu.edu. We welcome your comments.

The Northern California Innocence Project at Santa Clara Law, a member of the Innocence Network, operates as a law school clinical program where students, clinical fellows, attorneys and volunteers work to identify and provide legal representation to wrongfully convicted prisoners. NCIP is also dedicated to raising public awareness about the prevalence and causes of wrongful conviction as well as promoting substantive legal reforms to prevent future wrongful convictions.

Dear Friends,

Over the last 12 years, the Northern California Innocence Project (NCIP) has made a measurable impact on California's justice system.

In 2001 when we opened our doors, we could not have imagined accomplishing all that we have. We set out with a small team of spirited law students to win the freedom of wrongfully convicted California prisoners. We did not anticipate the outpouring of concern and generosity that has fueled this program ever since—through establishing the innocence of 16 people and making significant inroads into law reforms that will prevent future wrongful convictions.

Law firms have played a central role. Fifteen Silicon Valley firms have logged thousands of pro bono hours, lending expertise and resources to win the cases of Ronald Ross, Ken Foley, Martin Laiwa, Franky Carrillo, Albert Johnson and Jimmie Dick. See page 4 for a profile of this year's Justice for All Pro Bono Award recipient, Shearman & Sterling LLP.

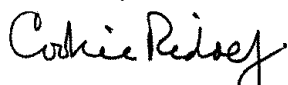
NCIP is working with law enforcement on systemic changes in identification procedures to minimize the risk of mistaken eyewitness identification, the single greatest cause of wrongful conviction, and increase the likelihood of convicting the real perpetrators. This year, NCIP attorneys addressed the California Police Chiefs Association on best practices for conducting eyewitness identification procedures and we are continuing to work with law enforcement and district attorneys across the state to encourage the voluntary adoption of such practices. For more on eyewitness identification, see page 15.

Last year the National Association of Criminal Defense Lawyers (NACDL) invited the Veritas Initiative to design and conduct research to inform members of Congress who will be voting on proposed legislation that would limit the discretion of prosecutors to withhold evidence.

In 2011, the Innocence Project, NCIP's Veritas Initiative and Resurrection After Exoneration launched a multi-state tour, "Prosecutorial Oversight: A National Dialogue in the Wake of Connick v. Thompson." Events were held in five states with judges, legal scholars and state bar disciplinary officers addressing the nature and extent of prosecutorial misconduct in each state and the consistent failure of their state to hold prosecutors accountable. The Veritas Initiative conducted research that generated the data that formed the basis of these discussions. For more on the prosecutorial oversight tour, see page 14.

Thank you to our partners, our staff, the NCIP Advisory Board and our many supporters who have made all this possible. And thank you to the courageous clients we have the privilege to serve.

Sincerely,



Kathleen "Cookie" Ridolfi



CHARLES BARRY



# Inaugural Speakers Bureau Workshop Trains Exonerees in Storytelling

On an early Saturday morning in September 2012, six exonerees met in a small theater with theater professors Aldo Billingslea and Kimberly Hill and four of their students. With their arrival began NCIP's first Speakers Bureau Workshop at Santa Clara University.

I helped organize the two-weekend event and attended as an observer. I arrived open to the men's and women's experiences and eager to hear their stories. I also hoped they would be ready for any speaking engagement after the workshop concluded. Two weeks later I would find my hopes had been surpassed.

Within the first few minutes of the workshop it was apparent the participants had varying levels of public speaking experience. Each person was comfortable telling her or his story, but not all of them accepted the professors' notion that less can be more. When told he'd have to cut his story down to one minute, one participant replied, "For 20 years I didn't have a voice. No one listened to me. Now I'm free and I have a voice. I have a lot to say and it's gonna take more than a minute to say it." Heads nodded around the room. His statement set the tone for the weekend. Each one of these men and women had years of stories to tell. No one wanted to cut their story short and—now free—they didn't have to.

We spent the first day building trust and allowing each participant to tell their story: how and why they were arrested, what led to their wrongful conviction, how they gained their freedom and what happened on the day of their release. Their stories were as different as each of these men and women. Mistaken identity. Withholding of exculpatory evidence. False snitch testimony. One young man had been in prison only two years before he was offered and accepted a plea that would secure his release. His mother represented him at the workshop because he died in an unrelated hit-and-run accident only a few years after his release. Her grief at his unjust conviction and then tragic loss has inspired her to continue to

tell his story. One man spent 20 years in prison—over half of his life. He had been out the shortest time of all of the participants and his emotions were still raw, challenging everything the instructors told him.

On the second day, the participants delivered a 20-minute version of their speeches. As each person told their story I saw thumbs swipe away tears as they relived the experience of being an innocent person in prison. Only the mother had a different perspective as she talked about the change in her 16-year-old son who entered prison and the 18-year-old man who was released. Her anguish at forcing him to accept a plea at the cost of formally establishing his innocence was apparent in her every word. We left the theater emotionally drained and needed the week to regroup.

The next weekend focused on specific storytelling skills—creating an arc within a story, finding the hook for a particular audience and avoiding the rabbit holes. As each participant shared more details about their stories, we found humor. One participant became an expert in tropical fish, breeding and cross-breeding fish in his contraband aquarium. Another told of how he managed to procure dozens of cooked chicken breasts to create a burrito feast for himself and his cell block.

By the end of the second weekend, each participant had told their story many, many times, each time honing in on their essential message. They used props. They crafted funny anecdotes. They let us inside and shared something of themselves. The



Speakers Bureau participants and instructors take a break from storytelling.

proud stories they told on that last day differed tremendously from the tentative stories of that first day. I could see the fruits of the workshop in all they did, from how they approached the podium and commanded the room to silence to how they went down a side street in their storytelling and brought it back to the main point.

But the workshop was so much more than just a public speaking exercise. It was a communal experience that I was privileged to share with these six amazing men and women who have traveled someplace most of us never will go. They have come out on the other side ready to share their stories with us and we are honored to help them do so. ♦

*If you would like to have one of the participants in the Speakers Bureau Workshop speak to your organization, please go to <http://law.scu.edu/ncip/request-a-speaker.cfm> or contact NCIP at 408-554-4790.*

*Written by Nikki Pope, NCIP advisory board member and Speakers Bureau founder.*

# Shearman and Sterling LLP



Shearman & Sterling Partner Jim Donato and Associate Jiyoun Chung.

In December 2012, the law firm of Shearman & Sterling LLP, together with NCIP and the California DNA Project, filed a habeas petition on behalf of Jack Edward Sagin in the California Court of Appeal.

Shearman & Sterling's work on the case began in November 2009, when it joined NCIP which had been working on the case since 2002. Jack Sagin was convicted in 1986 for the July 1985 murder of a 40-year-old woman in her Monterey apartment. There was no physical evidence or eyewitness testimony linking Sagin to the crime scene or the victim. The prosecution's entire case rested on the testimony of two jailhouse "snitches," both of whom had previously provided testimony in exchange for lighter sentences and who claimed that Mr. Sagin had spontaneously confessed the crime to them while in custody together. Sagin has maintained his innocence from the day he was first wrongly accused of this crime in 1985. As he said at the end of his trial, "You made a mistake, because I did not kill this woman."

When Shearman & Sterling came on board, NCIP had obtained a court order granting Mr. Sagin the right to conduct post-conviction DNA testing, and the preliminary results showed that,

despite the fact the crime was the result of a struggle, none of the DNA found at the crime scene matched Mr. Sagin's. Rather, the DNA of multiple unidentified males was found, including an unidentified profile under the victim's fingernails on the hand on which she had defensive wounds.

Though the court order that provided for DNA testing also ordered

that the unidentified male profiles that had been recovered be searched against state and national DNA databases, both the Monterey District Attorney's Office and the California Department of Justice opposed this request. They argued that state and FBI regulations prohibited the profiles from being searched against those databases. Shearman & Sterling briefed and argued the issue to the trial court after which the court granted their motion and ordered the database searches.

After a further meet and confer process which involved a limited re-investigation of the case and retesting of some of the DNA evidence, the state searched the fingernail profile against the state and national DNA databases, but there was no match. Interestingly, further DNA testing revealed that the DNA of the victim's co-worker, who was the last known person to see her alive, was on a bloody towel that was found laid across the victim's legs. While the Monterey District Attorney's Office re-interviewed the co-worker twice, it did not pursue any further action against him.

Shearman & Sterling, NCIP, and the California DNA Project filed a habeas petition on Mr. Sagin's behalf in the Monterey County Superior

Court in March 2012. The habeas petition argued that the new, previously unavailable DNA-based evidence taken from the victim's fingernails and other sources, including bloodstains and semen stains at the crime scene, shows the DNA of third parties, but conclusively excludes Mr. Sagin. The new DNA evidence confirms that there is no link between Mr. Sagin and the crime scene, establishes that Mr. Sagin was convicted only on the basis of material false evidence and completely destroys what was indisputably a close case, based as it was almost exclusively on jailhouse snitch testimony.

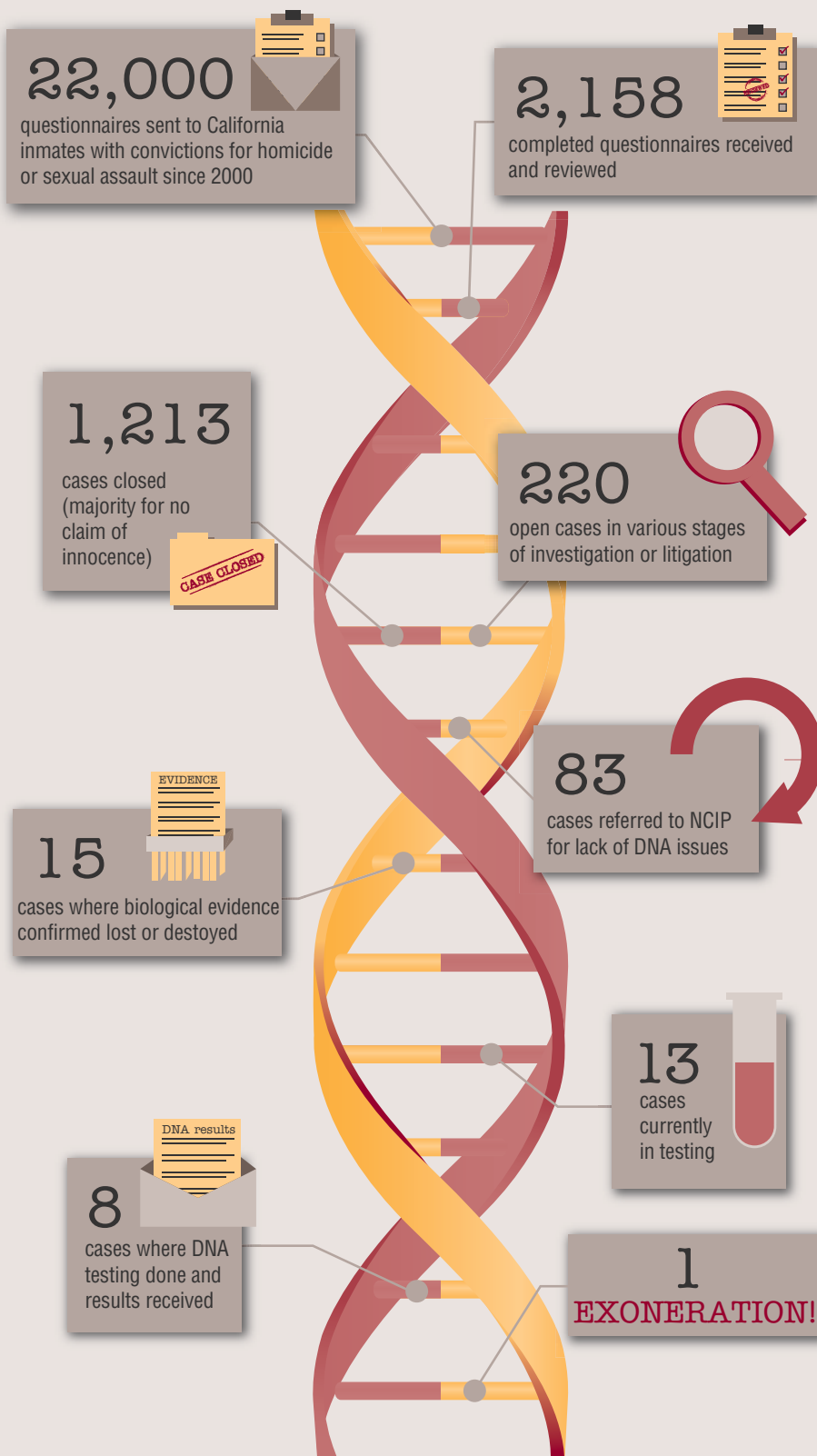
In October 2012, the trial court denied the petition, ruling that the fact that Mr. Sagin's DNA was not found on the items tested "does not point unerringly to his innocence." Not to be deterred, in December 2012, the team filed a further habeas petition in the California Court of Appeal.

All told, Shearman & Sterling has devoted hundreds of pro bono hours to the case on Mr. Sagin's behalf. Its team of attorneys has briefed and argued the DNA database issue, worked with DNA experts, investigated Mr. Sagin's case, and put in the painstaking work involved in preparing two rounds of habeas petitions.

Shearman & Sterling, NCIP, and the California DNA Project have worked in close collaboration on this case, and the team's hope is that the pending habeas petition finally brings justice for Mr. Sagin.

For their unflagging pro bono effort and countless hours of top-notch legal work, NCIP commends the leaders of Mr. Sagin's team, Jim Donato and Jiyoun Chung, along with all the attorneys of Shearman & Sterling LLP, and is proud to present them with the 2013 Justice for All Pro Bono Award. ♦

# California DNA Project in Action



The California DNA Project (CDP) continues to make progress pursuing post-conviction DNA testing to support claims of innocence for California inmates.

Since beginning a second grant cycle in April 2012, DNA test results were obtained in eight cases. NCIP's latest exoneration, Johnny Williams, is one of those cases, with DNA test results excluding the client. (See the article about the Williams case in this newsletter.) In another case, a California Innocence Project (CIP) client has recently been excluded as the source of male DNA found on a sexual assault victim. CIP is currently negotiating with the San Diego County District Attorney's Office for his release and hopes to reach a resolution soon.

In two cases, there was insufficient DNA to obtain a profile for comparison. In two other cases, only the victim's DNA was found, in one case the results were inconclusive and in the remaining case, DNA testing confirmed his guilt. These cases will be closing so that the Project can focus its resources on other investigations.

CIP is currently working on getting additional pieces of evidence tested. In fifteen cases, CDP has confirmed that biological evidence was lost or destroyed. Unfortunately, we will never know whether that evidence could have exonerated a wrongfully convicted inmate.

Further complicating matters, evidence is not always retained in a dependable manner. In one case, while court records indicate that a specific item of evidence was preserved, the court staff cannot locate the evidence. "It is frustrating to learn after two years of investigation that the evidence is lost," said Kelley Fleming, staff attorney for the California DNA Project. "I have serious doubts about the client's guilt but was forced to close the case." ❖



## Life After Exoneration: Update on Maurice Caldwell

For 20 years, NCIP client Maurice Caldwell was in prison because of an eyewitness misidentification. In 2011, a judge overturned his 1990 murder conviction for the shooting of a man during a drug deal in San Francisco's Alemany Public Housing Projects. Maurice's case tragically demonstrates why improving eyewitness identification procedures is so important (see page 15 for NCIP efforts on this front).

Maurice was convicted based on the testimony of a single eyewitness, a woman who was his neighbor in the housing project where the murder occurred. The eyewitness originally told police that the shooters did not live in the area and that she did not know their names or nicknames. During her interview, police brought Maurice to her door and identified him by name. She did not identify him as the shooter at the time, but two weeks later picked him out of a photo lineup identifying him by his nickname "Twone." Her testimony was the only piece of evidence police had linking Maurice to the murder. NCIP unearthed new evidence in the case, including a statement from another man admitting that he was the real killer, and Maurice's conviction was overturned.

Although Maurice is grateful to have his freedom, his struggles did not end with his release. When Maurice was released from prison, his sister Debbie took him into the home she shared with their two ill uncles. She was the only family member left of the close family he had known growing up. Maurice slept on Debbie's couch for about a year while he readjusted to the world and planned for the future.

Fortunately, a wonderful man named Michael Swernoff gave Maurice a chance and hired him to work at Badger Forest Products. Maurice had developed back problems while working in prison. After a few months, his hands started to go numb and the pain in his back became so unbearable that he was forced to go on workers' compensation.

**He proudly lives in his own apartment with his girlfriend Pam and her daughter Maya, who calls Maurice "Daddy" to his great delight.**

An MRI revealed he had a bulging disc and would no longer be able to perform manual labor. Although Maurice worked in prison for 20 years, he never earned a cent and has accrued no Social Security.

Despite these difficulties, Maurice always has a warm smile on his face

says yes, and audiences love him. Telling his story to people who listen and care makes Maurice feel rejuvenated, motivated and relieves some of his pain and stress.

Maurice still dreams of working with children and at-risk youth, using his experiences to help others. Working would make it possible for him to buy a house for his family and to help care for his ill uncles and sister. It would also enable him to purchase a much-needed car. NCIP salutes Maurice for his fortitude and perseverance and hopes that his dreams turn into reality. ♦



Maurice Caldwell with his girlfriend, Pam, and her daughter, Maya.

and an incredible appreciation of all things big and small. He proudly lives in his own apartment with his girlfriend Pam and her daughter Maya, who calls Maurice "Daddy" to his great delight. Maurice is honored to have a family as he had always wanted children.

As a local and recently released exoneree, Maurice is often asked to speak at various schools and organizations about his experiences. Maurice always

*If you know of any employment opportunities that would enable Maurice to realize his goals, please call NCIP at 408-554-4790 or email us at [ncip@scu.edu](mailto:ncip@scu.edu). Additionally, if you or a friend has a car to donate, please contact NCIP.*

# Innocence Around the Nation: 2012 Highlights

## Exonerations

Innocence Network member organizations helped to exonerate 22 innocent people in the United States in 2012. The 22 exonerees served more than 279 combined years before they were finally freed. Six of them served over 20 years each. Each case represents countless hours—usually years—of devoted advocacy by the attorneys, paralegals, investigators and students who comprise the Innocence Network.

## National Registry of Exonerations

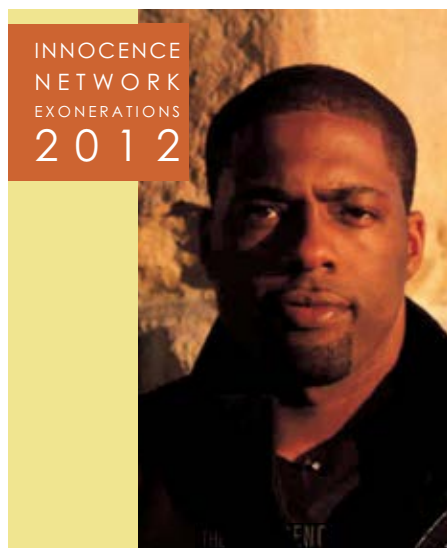
In May 2012, The University of Michigan Law School and Northwestern University's Center on Wrongful Convictions unveiled their joint project, the National Registry of Exonerations. The National Registry of Exonerations contains the largest collection of wrongful convictions ever assembled in the U.S. and is constantly updated, spanning from 1989 to present. As of February 1, 2013, the exoneration count was at 1,063.

A preliminary analysis of 873 wrongful convictions found that:

- Perjury and false accusations are the most common causes of wrongful conviction, occurring in 51 percent of cases;
- Men comprise 93 percent of exonerees; and
- 101 death-row inmates have been exonerated since 1989.

The same analysis noted that 78 exonerations have occurred in California since 1990. In the report, co-author Samuel Gross noted that the presence of organizations such as the Northern California Innocence Project resulted in higher exoneration levels in their home counties.

The National Registry of Exonerations is available for free online at [exonerationregistry.org](http://exonerationregistry.org).



## Forensic Science

New advances in forensic science—particularly in arson—have drawn attention to potential wrongful convictions based on faulty scientific evidence (see page 12 for additional information regarding improvements in fire science). In addition, the Virginia Department of Forensic Science (VDFS) performed DNA testing on hundreds of old homicide and sexual assault cases and found 38 individuals who may have been wrongfully convicted. The Urban Institute, a nonpartisan economic and social policy think tank, analyzed the results of the VDFS study and found that DNA analysis eliminated the wrongfully convicted person as a suspect in five percent of the homicide and sexual assault cases.

## Prosecutorial Misconduct

In a highly unusual move, Texas began an investigation into Ken Anderson, the former prosecutor who oversaw the wrongful conviction of Michael Morton. Mr. Morton was wrongfully convicted in 1987 for the murder of his wife, Christine Morton, in 1986. He spent 25 years in prison before he was exonerated by DNA evidence identified by the Innocence Project. A Court of Inquiry will now determine whether Mr. Anderson—who is accused of failing to disclose evidence that indicated another man might have killed Mr. Morton's wife—will face criminal charges.

## Eyewitness Identification Improved in New Jersey and Oregon Courts

In 2012, the New Jersey Supreme Court released expanded jury instruction regarding eyewitness identifications in criminal cases. The new jury instructions caution that many factors can influence eyewitness reliability and should be weighed by jurors to determine the reliability of the identification. Similarly, the Oregon Supreme Court unanimously ruled on eyewitness identification in criminal trials, shifting the burden of proof to prosecutors to prove that identification evidence is sufficiently reliable before it is admissible at trial. ❖

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## *Jimmie Dick Exonerated*

On September 28, 2012, the Alameda Superior Court exonerated NCIP client, Jimmie Dick, and granted his habeas petition. NCIP partnered with the law firm Simpson Thacher & Bartlett, LLP to provide pro bono representation. Mr. Dick, a 48-year-old Navajo Indian, was convicted of second degree murder in 1982. He was 17 at the time of the murder and has spent the last 30 years in state custody. The Alameda District Attorney chose not to oppose NCIP's petition after reviewing the overwhelming evidence NCIP and Simpson Thacher & Bartlett collected. Mr. Dick pled no contest to the lesser charge of voluntary manslaughter and was sentenced to prison time of four years long since served. We are currently working to challenge Mr. Dick's sentence for an assault he allegedly committed while in prison—an assault from which the other inmate walked away unscathed which, only because he was serving a life sentence, also carried a life sentence—so he can finally return home. ❖



Jimmie Dick's mother hugs him for the first time in 30 years after his exoneration.



The Dick legal team: Karla De La Torre, NCIP student; Rhonda Donato, NCIP attorney; Brandon Martin and Patrick King, Simpson Thacher & Bartlett, LLP attorneys.

## *George Souliotes Takes Another Step Toward Justice*

NCIP and the law firm Orrick, Herrington & Sutcliffe LLP won a major victory in July when a federal district court set aside the previous dismissal of NCIP client George Souliotes's petition for a writ of habeas corpus. NCIP and Orrick spent 10 years investigating and collecting evidence to discredit the faulty forensic analysis used to convict Mr. Souliotes of triple murder in a deadly 1997 fire. The court found compelling evidence of innocence based on the investigation and the state of California's concession that it cannot prove the deadly blaze was deliberately set.

Following the court's ruling, on July 12, 2012, NCIP and Orrick filed a petition for writ of habeas corpus. Three months after the petition was filed, the state filed its answer. Without delay NCIP and Orrick filed their traverse and now await the judge's ruling on whether he will grant or deny Mr. Souliotes's petition.

For more on Mr. Souliotes's case, visit <http://law.scu.edu/ncip/news-and-press.cfm>. ❖

**Breaking news on this case! See insert for details.**

Exonerees are released from prison without any assistance after losing years of their lives. If you or someone you know would be interested in helping our recently released exonerees, please email us at: [ncip@scu.edu](mailto:ncip@scu.edu). We would be especially interested in job assistance or training, educational opportunities and medical help.



*Ronald Ross Exonerated, continued from page 1*

## The Investigation

Through more than four years of investigation, Mr. Ross's legal defense team uncovered evidence of false testimony by key trial witnesses, including the victim, and tracked down exculpatory evidence from several new witnesses. Keker & Van Nest LLP attorneys presented this evidence and the case for Mr. Ross's innocence to the Alameda County District Attorney and the Alameda County Superior Court over three days of hearings.

During those proceedings, Mr. Embrey, Jr. recanted his trial testimony and identified his father, Steven Embrey, Sr. as the shooter, explaining that he feared repercussions from his father, who was known to be violent and had a criminal history.

Mr. Williams testified that he could not be certain about his trial identification of Mr. Ross as the shooter and apologized to Mr. Ross for implicating him. Mr. Embrey, Sr., who is currently facing attempted murder charges for an unrelated shooting in Oakland, admitted in an interview with Mr. Ross's legal defense team that he was present at the shooting, and acknowledged that Mr.



The Ross legal team: Linda Starr, NCIP; Reid Mullen, Jo Golub and Elliot Peters, Keker & Van Nest LLP; Seth Flagsberg, NCIP; and David Rizk, Keker & Van Nest LLP.

Ross was not there and had nothing to do with the incident. Other witnesses located by Mr. Ross's team corroborated Mr. Embrey, Jr.'s account of the shooting.

NCIP is extremely grateful for the Keker & Van Nest LLP team and their incredible work on this case—totaling more than 2,000 hours. It is with the help of pro bono attorneys like Keker & Van Nest and supporters like you that NCIP is able to continue this work of freeing innocent people from prison, educating future attorneys and reforming the system. ♦

The Northern California Innocence Project would like to extend its thanks to the following firms which have provided thousands of pro bono hours and resources to pursue justice for all:

Arnold & Porter LLP  
Bingham McCutchen LLP  
Cooley LLP  
Goodwin Procter LLP  
Keker and Van Nest LLP  
King & Spalding  
Latham & Watkins LLP  
McDermott Will & Emery  
Morgan, Lewis & Bockius LLP

Morrison & Foerster LLP  
Orrick, Herrington & Sutcliffe LLP  
Quinn Emanuel Urquhart & Sullivan LLP  
Reed Smith LLP  
Shearman & Sterling LLP  
Simpson Thacher & Bartlett LLP  
Weil, Gotshal & Manges LLP

## In Memoriam

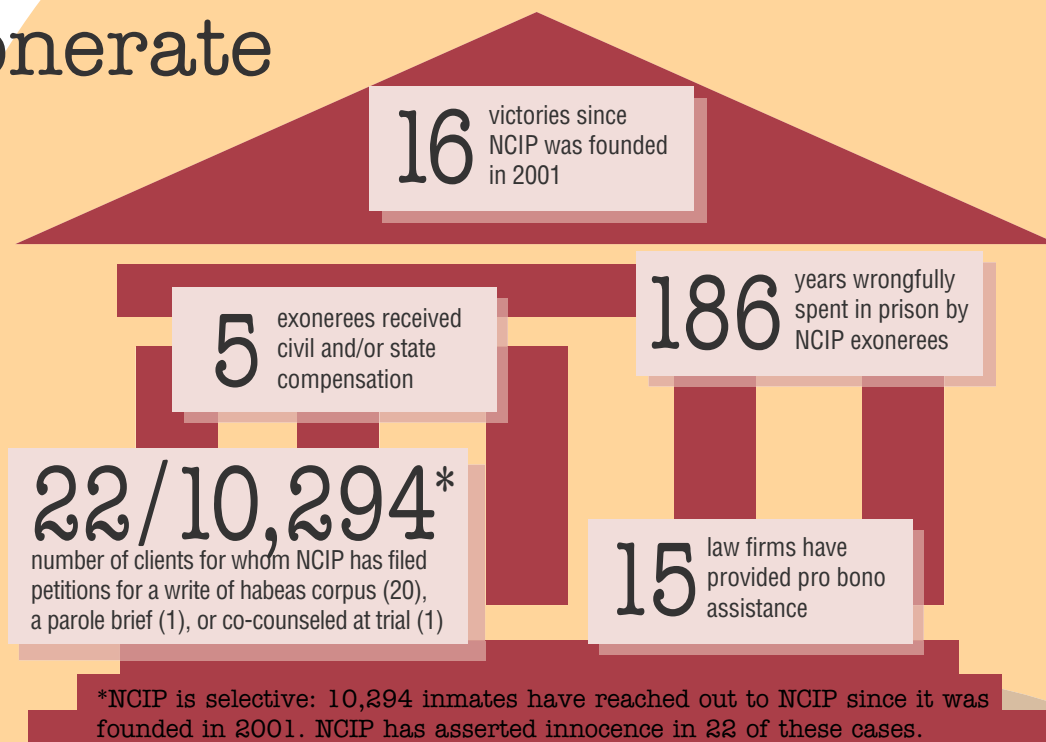
### Brian Wraxall

The entire NCIP staff was deeply saddened by the recent loss of Brian Wraxall, former Director of the Serological Research Institute. Brian was a longtime friend of NCIP and devoted countless hours to DNA testing and analysis in many of our cases. He was an exceedingly accomplished scientist and expert witness, with a long list of published articles and other acknowledgments of his expertise. But, perhaps more importantly in our work together, he was generous, able to explain complex scientific concepts to the non-scientist, and he had a great sense of humor. We will remember him as a kind man with a genuine, warm interest in other people, and a twinkle in his eye. His untimely passing is a loss to our community. We would like to extend our condolences to his family and his colleagues. ♦

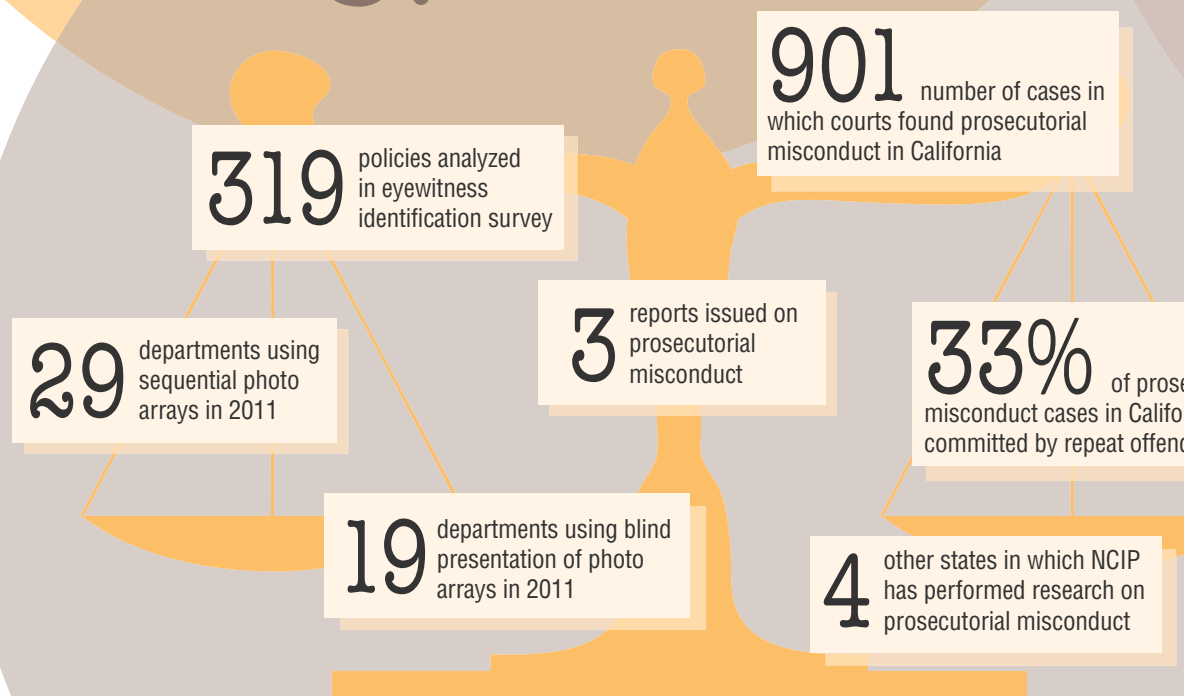


# Northern California Innocence Project

## 1. Exonerate



## 3. Reform





## At A Glance

### 2. Educate

**600+**

students have taken NCIP clinic since 2001

**5**

Breakfast Briefing events in 2012

**68**

clinic students in 2012

**6**

presentations to legal & law enforcement organizations in 2012

**9,417**

student hours worked in 2012

**18**

community education events in 2012

3-

Pronged Mission

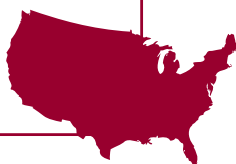
#### Exoneration Nation

**1063** exonerations nationwide

**302** DNA exonerations

**101** death row inmates exonerated

**79** members of the Innocence Network



#### Outreach 2012

**43,506** unique visitors to NCIP websites

**1,255** NCIP Facebook fans

**489** Twitter followers

**26** volunteers assisted in NCIP office



## Arson or Accident?

### How Faulty Fire Science Contributes to Wrongful Convictions



Three accidental fires took 10 lives and faulty fire science convicted and sent to prison three innocent people. David Lee Gavitt, James Klupperberg, and Kristine Bunch together served 66 years behind bars before courts set aside their convictions last year after concluding, based on scientific evidence, that the fires were accidental and not caused by arson.

Over the past decade, the mischaracterization of accidental fires as arson has moved to the forefront as a significant—and provable—cause of wrongful conviction in states across the country.

For most of the 20th century, fire professionals sorted through and tried to make sense of the rubble, debris and burn mark evidence left behind, attempting to better understand how fires start and spread. These practices led to the identification of “indicators” thought to explain what caused fires to ignite.

But over the last two decades, leading arson investigators discovered hard scientific evidence that can reliably retrace the path of fires and pinpoint their origin and cause. This research, based on chemical analyses, has shown that the previously relied-upon “indicators” were in fact unreliable. For instance, research has proven that a phenomenon known as flashover—when a room suddenly ignites all

at once—creates “indicators” that investigators had often incorrectly identified as “pour patterns” and proof of arson.

New research and scientific analysis are sparking a revolution in fire science, resulting in the reexamination of hundreds of arson convictions across the country. As the new investigative practices

gain traction, innocence projects and lawyers devoted to documenting wrongful convictions are now able to prove that fires once classified as arsons were nothing more than accidents.

#### States Take Action

Gradually, states are recognizing that fire investigators need to be retrained and that a better understanding of the science of fires—how and why things burn as well as the analysis of fire residue—is needed.

In California, NCIP client George Souliotes, 71, wrongfully convicted due to faulty arson “indicators,” is awaiting justice in his case (see Case Rounds on page 8 for more).

The National Registry of Exonerations, a joint project of Michigan Law School and Northwestern University’s Center on Wrongful Convictions, identified 12 cases throughout the country where defendants were wrongly convicted of arson based on “indicators” that misled fire investigations.

Texas, previously known for a poor quality Fire Marshal’s Office, has appointed a new Fire Marshal, Chris Connealy, who is determined to turn Texas into an example for the rest of the nation. Mr. Connealy is embracing recommendations from the Texas Forensic Science Commission and has

formed a Science Advisory Workgroup to provide education and training for arson investigations across the state. Texas’s actions are largely spurred by a newspaper investigation into the faulty fire science that led to the execution of Cameron Todd Willingham in 2004.

Experts now say that Mr. Willingham’s arson conviction was based on unreliable evidence. The investigation of the Willingham case prompted the Texas Innocence Project to review hundreds of additional arson cases. As a result, the Texas Innocence Project and the Texas Fire Marshal’s Office have begun a joint reinvestigation of 10 other arson cases.

Other states are also taking action. The State of Iowa established a program designed to look for wrongful arson convictions. The Nebraska, Oklahoma and Arizona legislatures have passed resolutions calling for the use of state-of-the-art fire science in arson investigations. A panel of experts at John Jay College of Criminal Justice in New York is examining a handful of arson cases to determine whether or not they led to wrongful convictions. And in Kentucky, Susan Lukjan awaits a new trial after her arson conviction was vacated in 2012 based on supporting scientific evidence.

More and more state government programs and innocence projects are campaigning to reeducate investigators and reinvestigate previous convictions. On a national scale, the heads of several fire investigation organizations met in the fall of 2012 to discuss ways to educate state fire marshals across the country on new developments in fire science. In the coming years, NCIP and other innocence projects will rely on the scientific-based forensic methods to free those who were wrongly convicted of arson in the past and prevent wrongful convictions in the future. ♦

## Education Initiative



Attorney Chuck Sevilla educates the audience at NCIP's April Breakfast Briefing about the dangers of jailhouse snitch testimony.

One of NCIP's three fundamental missions is to educate its students and the public about wrongful conviction. We at NCIP are proud of our success in pursuing this goal in 2012, and will continue to keep it a priority in 2013.

In addition to teaching both basic and advanced NCIP clinical classes at Santa Clara Law, NCIP representatives often speak on panels and give presentations throughout California. In 2012, NCIP attorneys and exonerees presented on topics including prosecutorial misconduct, exoneration, barriers to exoneration and forensic science. Our representatives spoke to a variety of audiences, including the California Police Chiefs Association, the League of Women Voters, LeadAmerica and the Rotary Club of San Jose.

NCIP is particularly proud of the Veritas Initiative panel hosted as part of a nationwide tour entitled "Prosecutorial Oversight: A National Dialogue in the Wake of Connick v. Thompson." The panel discussed prosecutorial accountability, training and transparency. We also continued our Breakfast Briefing speaker series, hosting five briefings in 2012. Speakers discussed a variety of topics including snitch testimony, eyewitness identification reforms and the death penalty.

In 2013 we will continue our efforts to fulfill this mission. ♦



NCIP Legal Director Linda Starr participates in a panel at Cinequest on the effectiveness of film as a catalyst for social action.

*If you would like to request an NCIP speaker, go to:  
<http://law.scu.edu/ncip/request-a-speaker.cfm>.*



Natasha Minsker, Death Penalty Policy Director for the Northern California ACLU, discusses the history and ballooning costs of the death penalty.



NCIP Supervising Attorney Maitreya Badami speaks to the Rotary Club of San Jose about eyewitness misidentification.



Gloria Killian speaks about her wrongful conviction and new book at the November 2012 Breakfast Briefing.



## NCIP Policy Reform: Eliminating Prosecutorial Misconduct

Last October, NCIP held a highly successful public forum on prosecutorial accountability to celebrate the two-year anniversary of its Veritas Initiative policy center. The panel discussion, part of a five-state nationwide tour titled “Prosecutorial Oversight: A National Dialogue in the Wake of *Connick v. Thompson*,” included Santa Clara District Attorney Jeff Rosen, Special Assistant District Attorney David Angel, retired Judge James Emerson, Robin Brune from the California State Bar, Palo Alto defense attorney Tom Nolan, NCIP’s Cookie Ridolfi and exoneree Obie Anthony.

KQED’s Rachael Myrow moderated the forum, which was attended by over 100 people. The panelists discussed topics such as disciplinary transparency, increased training and the sometimes reckless practices of prosecutors. Santa Clara District Attorney Rosen stated the solution to ending prosecutorial misconduct lies in working with groups like NCIP, not against them.

### Veritas Initiative Releases New Report on Prosecutorial Misconduct

NCIP’s Veritas Initiative continued its fight against prosecutorial misconduct with the release of the 2011 update to their groundbreaking study, “Preventable Error: Prosecutorial Misconduct in California 1997-2009.” The report reveals that in 2011, California courts found that prosecutors had committed misconduct in 92 cases, and that 19 prosecutors were multiple offenders. This disturbing statistic underscores the need for consistent monitoring and increased accountability of prosecutors.



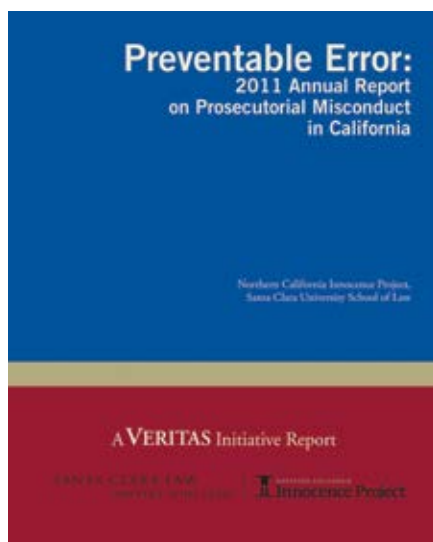
KQED’s Rachael Myrow introduces the “Prosecutorial Oversight: A National Dialogue in the Wake of *Connick v. Thompson*” panel in front of a packed auditorium in October.

“A group of bad actors is dragging down the reputation of good prosecutors,” said NCIP’s Cookie Ridolfi, “and we have a system that has protected them.” In the 15-year period that the Veritas Initiative studied, researchers discovered over 900 cases

in which courts found that California prosecutors had committed misconduct.

NCIP’s Veritas Initiative is currently reviewing 2012 cases and will continue to document prosecutorial misconduct in California as part of its mission to advance the integrity of our justice system through research and data-driven reform. ♦

*Go to [www.veritasinitiative.org](http://www.veritasinitiative.org) to download our reports on prosecutorial misconduct.*



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# Improving Accuracy of Eyewitness Identifications

Eyewitness misidentifications have played a part in almost half of the nation's 1,063 exonerations since 1989.

Studies show that witnesses frequently select the incorrect suspect due to influence, often unintentional, from the police. Based on these studies, best practice reforms have been recommended to reduce the possibility of eyewitness misidentifications.

One example of a best practice is the double-blind lineup. In this lineup, neither the witness nor police officer presenting the lineup knows which participants are suspect. The process makes it much more difficult for the police to guide a witness. Another best practice is the sequential lineup, where a witness views photos or participants one at a time rather than in a group. This method prevents witnesses from making comparative judgments about who most resembles the culprit and also focuses the witnesses on whether they truly recognize an individual perpetrator.

The Northern California Innocence Project started collecting data in 2010 to determine where in California the best practice reforms were being followed. At that time, just a handful of jurisdictions were utilizing best practices, San Francisco and Santa Clara counties among them.

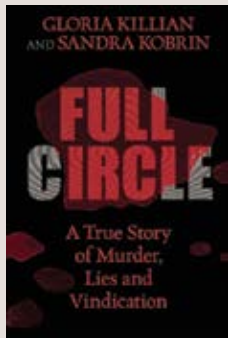
Since 2010, NCIP, working with partners in law enforcement and others, has succeeded in increasing the use of best practices throughout the state. In 2012, NCIP furthered the use of eyewitness identification best practices through the following activities:

- Organizing and facilitating a panel at the California Police Chiefs Association's Annual Symposium that discussed eyewitness identification procedures, including double-blind and sequential practices.
- Working with law enforcement leaders throughout the state to adopt the double-blind and sequential practices.
- Providing research materials and jury instructions to a trial attorney in Alameda County where improper identification procedures were used, eventually leading to dismissal.
- Educating the public through speaking engagements and appearances on the radio.

NCIP is committed to working with law enforcement and other key stakeholders to ensure that eyewitness identification best practices become commonplace throughout California. ♦

## Book Review: Full Circle

A True Story of Murder, Lies and Vindication by Gloria Killian and Sandra Kobrin



"The officer walked a somber Gloria in silence to the holding cell at the county jail, opened the heavy steel door, locked it behind her and walked away. Alone, Gloria sat down on the cold metal bench unable to calm her racing mind. How could the jury find me guilty of something I haven't done?"

Gloria Killian was in the midst of finishing law school when her life was forever altered. "Full Circle" details the story of her wrongful conviction, 17 years of incarceration and finally, her exoneration.

Killian was convicted of murder and robbery and sentenced to 32-years-to-life in prison based on the perjured testimony of one of the actual perpetrators of the crime, an acquaintance of Gloria's former roommate. In exchange for his testimony implicating Gloria Killian in the crime, he was promised a reduced sentence and freedom for his wife who was most likely involved.

During her time in the California Institution for Women at Chino, Killian worked in the prison law library helping other inmates with their cases and other legal issues. She was also at the forefront of establishing battered women's syndrome as a mitigating factor in criminal cases and through her advocacy she helped to free a woman convicted of killing her abuser.

Killian and her co-author, Sandra Kobrin, a journalist and screenwriter, have crafted a captivating story from Killian's real life events. The tale is accessible, and has an authenticity that can only come from having lived the story. Much of the book is heart-wrenching, especially Killian's anguish at being in prison when her mother died.

"Full Circle" weaves the determination and courage of the wrongfully convicted with the despair and hardship of injustice. This book is an engaging addition to the literature on wrongful conviction.

*"Full Circle" was recently honored with the 2012 USA Best Book Award in the True Crime category. Congratulations to Gloria Killian and Sandra Kobrin on this well-deserved award!*

To order your copy, go to [www.newhorizonpressbooks.com/new/fullcircle.php](http://www.newhorizonpressbooks.com/new/fullcircle.php).

# Donor Honor Roll

Thanks to the generous support of our donors, we can continue our important work—fight for justice for those who have been wrongly convicted, raising public awareness about the prevalence and causes of wrongful convictions, and promoting substantive legal reforms to prevent future wrongful convictions.

*Please note: this list reflects **cumulative gifts** and pledges received between July 1, 2011 and February 28, 2013. We make every effort to compile an accurate list. If your name is missing, misspelled or there are other inaccuracies, please contact Audrey Redmond, (408) 551-1849 or email [alredmond@scu.edu](mailto:alredmond@scu.edu).*

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"I believe each small thing we contribute, whether it is time or service or a donation, can help restore a lifetime. The lessons I learn from [NCIP] are integral in my teaching at the Sheriff's Criminal Justice Training Academy, and often give real-life context to topics such as eyewitness identification, false confessions and informant statements."

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Kathleen Peters  
Maureen and James Pope  
Therese and Paul Warner  
Linda and Glen Wegner

### In recognition of work by Andy Ludwick

Frances Codispoti & Kenneth Schroeder

### In honor of Dennis McBride

Casey McBride  
Cory McBride

### In honor of Maurice Possley

Adrienne Drell and Franklin Nitikman

### In honor of Frank and Denise Quattrone

Tom and Kama Fletcher  
John Foderaro  
Keker & Van Nest LLP  
Kathryn and Richard Kimball  
Kristin Klein and William Donahoe  
Listwin Family Foundation/Don Listwin  
Sharon and Stanley Meresman  
Marie and Michael Pressman  
Debra and Andrew Rachleff  
Esther and Richard Rosenfield

### In honor of Samantha Reardon-Carter

Lynne and Lawrence Reardon

### In honor of Kathleen Ridolfi and Linda Starr

Karen Guldán  
Jane Kroesche

### In honor of John Stoll

Barbara Bullock Pyles

## REMEMBERING

### In memory of Florence Boris

Madeleine and Michael McClellan

### In memory of Arthur Carmona

Ronnie Carmona

### In memory of Steven Ray DeSantis

Wm. Robert Wall/Wall Investigations

### In memory of Dr. Mary B. Emery

Sarah Birmingham

### In memory of Michael Joseph Greico

Mercy Greico

### In memory of Alycia Mesiti-Allen

Roberta Fitzpatrick

### In memory of Steve Wright

Nanette and Thomas Silveroli

## Why I Give



### Carol Marks, Marriage and Family Therapist

"I have devoted a significant portion of my career and a major portion of my life to fighting for justice for those who are wrongfully accused. I ache for those [wrongfully convicted] that I know because of their pain, suffering and

feelings of helplessness. NCIP is exonerating innocent people as well as educating the public in a crucial way, which is why I support and will continue to support this valuable program."

## MATCHING GIFTS

Capital Group Companies  
Charitable Foundation  
Microsoft  
Radian Guaranty

## PRO BONO FIRMS

Arnold & Porter LLP  
Bingham McCutchen LLP  
Cooley LLP  
Goodwin & Procter LLP  
Keker & Van Nest LLP  
King & Spalding  
Latham & Watkins LLP  
McDermott Will & Emery  
Morgan, Lewis & Bockius LLP  
Morrison & Foerster LLP  
Orrick, Herrington & Sutcliffe LLP  
Quinn Emanuel Urquhart & Sullivan LLP  
Reed Smith LLP  
Shearman & Sterling LLP  
Simpson Thacher Bartlett LLP  
Weil, Gotshal & Manges LLP

## PRO BONO ATTORNEYS & INVESTIGATORS

Hayward Blake  
Joya Cazares  
Chuck Hallman  
Mark Jones  
Sheila Klopfer  
Francie Koehler  
Sarah Michelotti  
Pipkin Detective Agency

## VOLUNTEERS 2012

Keith Bayley  
Matt Berkley  
Kelly Biggi  
Griselda Cervantez  
Charlotte Chinnery  
Alex Connell  
Nina Decker  
Spencer Dembner  
Gloria Geller  
Carly Hasbrook  
Jessica Hempstead  
Brahmani Houston  
Bami  
Nicole Kostrzak  
AJ Kutchins  
Kara Lacy  
Emma Lloyd  
Matthew Marak  
Eloisa Martinez  
Erica Mawbey-Lance  
Meha Goyal  
Alejandra Ramirez  
Courtney Redmond  
Shelly Saini  
Rachel Tucker  
Michael Willemsen





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## Web Chatter *Your comments on our social media*



### Franky Thanksgiving photo

"Happy Thanksgiving Franky! Hope it is the best meal you have had thus far... with many more to come!"

"Talk about Thanksgiving... Franky Carrillo will never forget this one. Thanks Nor Cal Innocence Project. Welcome home Franky."

"You can't keep a good guy down."



### Obie and Denise's Wedding

"Wonderful! Obie and Denise are a beautiful, wonderful couple!"

"So happy for you both!! Huge congrats!"

### Maurice's Birthday

"Looking good!"

"Happy Birthday, God bless you with many more."



Northern California

# Innocence Project

## BREAKING NEWS... BREAKING NEWS

### Second Exoneration in 2013: Northern California Innocence Project Successfully Exonerates Innocent Man of Sex Crimes He Did Not Commit Judge Overturns Conviction After DNA Evidence Proves Johnny Williams' Innocence

On March 8, the Alameda County Superior Court overturned the wrongful conviction of Johnny Williams for sex crimes after new DNA evidence proved his innocence. Mr. Williams served 14 years in prison.

"We are thrilled the state has recognized Johnny's innocence and cleared his name," said Linda Starr, NCIP's Legal Director. "And we are grateful to the Alameda County District Attorney's Office for their cooperation. Of the 303 innocent people exonerated by post-conviction DNA testing, nearly 75 percent involved eyewitness misidentification. Thus, in cases relying almost exclusively on eyewitnesses, we've learned that DNA evidence can be the only way to prove innocence conclusively."



Northern California Innocence Project and California DNA Project client Johnny Williams walks out of a Northern California parole office after being exonerated March 8, 2013.

#### Background

On September 28, 1998, a man who called himself "Johnny" sexually accosted a nine-year-old girl as she walked home from school. The next day, while walking in the same area, the same man attempted to rape her. Mr. Williams was a former neighbor of the victim and familiar with her family. When the victim first reported



Johnny Williams and NCIP Supervising Attorney Maitreya Badami speak to reporters about his exoneration.

the assault she did not say she knew the attacker, thus suggesting a stranger. However, individuals close to the victim suggested to police that "Johnny" may be Mr. Williams. One week after the attack the Oakland Police Department collected the clothes the victim was wearing during the assault. Forensic tests at the time of trial were unable to confirm biological evidence and no DNA testing was performed. On June 8, 2000, Mr. Williams was convicted of two counts of forcible lewd conduct against a child and one count of attempted rape.



Johnny Williams visits NCIP and CDP offices and reads the touching notes from supporters.

In 2012, NCIP, with the assistance of CDP, had the victim's t-shirt re-tested by the Serological Research Institute (SERI) and Oakland Police Department Crime Lab. Both labs found enough biological material to yield a complete male DNA profile that conclusively excluded Mr. Williams as the perpetrator.

"To be convicted of such a terrible crime and spend 14 years in prison, labeled a sex offender, is a nightmare most people could never imagine," said Melissa Dague O'Connell, Mr. Williams' lead attorney with CDP. "Without DNA evidence, we would not have been able to prove his innocence."

*Continued on other side*

Mr. Williams' exoneration was made possible by a grant which created CDP and paid for the costs of retesting. However, that funding will expire in September.

"Something terrible happened to that little girl and I hope they find the

person who did it. I am thankful people finally know the truth about me so that I can rebuild my life," Mr. Williams said after the ruling.

This is the second innocent person NCIP has exonerated in 2013, and its 16th victory since its creation in 2001. ❖

*Send Johnny a message of congratulations and make a donation to help NCIP exonerate the next innocent person awaiting our help at [www.ncip.scu.edu](http://www.ncip.scu.edu).*

## Federal Magistrate Recommends Granting Habeas Petition in NCIP Arson Case

Long-time NCIP client George Souliotes is one significant step further along his long path to freedom.

On March 7, Magistrate Judge Michael Seng issued a 93-page Finding and Recommendation, which recommended that Souliotes's petition for writ of habeas corpus be granted on the grounds of ineffective assistance of counsel and cumulative error.

The Magistrate analyzed each claim thoroughly and determined that Mr. Souliotes's trial attorney had failed to provide him with constitutionally adequate assistance at trial and that, but for counsel's failure to call available witnesses, both experts and lay witnesses, the outcome of the trial would probably have been different. In Mr. Souliotes's actual innocence proceedings in 2012 the Magistrate held that if the unreliable forensic evidence had not been admitted at trial, he would have been acquitted.

Souliotes has been imprisoned since 1997 for murder and arson arising out of a 1997 fire that destroyed a rental home he owned in Modesto and killed three tenants. In earlier proceedings, the California Attorney General

conceded that all of the purportedly scientific evidence relied upon by prosecution experts to conclude that the fire was intentionally set has since been determined to be invalid. The U.S. District Court for the Eastern District of California previously held that Souliotes demonstrated enough evidence of his actual innocence to justify waiving a procedural bar that would otherwise have prohibited the court from considering his other challenges to his conviction.

The State has two weeks, until March 21st, to file objections before the District Court either adopts, rejects, or revises this order.

Notably, the Magistrate recommended that Mr. Souliotes, who is now 72 years old, be released within 30 days if the State does not decide to retry him. Such a retrial, in light of the stipulated absence of evidence of arson, is essentially unthinkable. ❖

*Sign up to get email updates about Mr. Souliotes's case at [www.ncip.scu.edu](http://www.ncip.scu.edu).*



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